PUBLIC PROSECUTOR

v.

LIM AH BEK

HIGH COURT MALAYA, PENANG
GUNN CHIT TUAN J
[CRIMINAL TRIAL NO. 9/80; FEDERAL COURT CRIMINAL APPEAL NO. 1 OF 1982]
10 DECEMBER 1981, 12 JULY 1982 & 12 JULY 1989

CRIMINAL PROCEDURE: *Trafficking - Drugs found in bag held by accused - Defence - Whether raised doubts in prosecution case - Balance of probabilities - Defence conceding that prosecution had made out a prima facie case - Accused gave evidence on oath - Chemist report - No evidence to show that accused had handled the drugs - Whether defence might reasonably be true & consistent with her innocence - Sections 39B(1)(a), 39B(2) of the Dangerous Drugs Act 1952.*

The accused was found carrying a plastic bag containing two men's shirt on top and beneath them were five packages containing heroin and some Chinese newspapers at the Butterworth Bus Station. She was then charged with trafficking in dangerous drugs, to wit 793.8 grammes of heroin and thereby committed an offence under s. 39B(1)(a) of the Dangerous Drugs Act 1952 (Revised) and punishable under s. 39B(2) of the same Act.

As a defence, the accused said that she had no knowledge of the contents of the plastic bag and she was holding the bag for a male Chinese who had gone to buy some cigarettes and whom she met at the bus station in Alor Star. She knew him by sight and did not know his name.

Held:

[1] The accused had raised, on the balance of probabilities some reasonable doubts in the prosecution's case:

(i) She had raised a reasonable doubt that there was a male Chinese who came with her and had given her the plastic bag before she was arrested,

(ii) She had raised a reasonable doubt as to whether the Court should draw inference that the police did conduct investigation regarding the contents of the accused's recorded statement,

(iii) She had raised a reasonable doubt as to whether the two men's shirt belonged to the accused's husband or whether they belonged to someone else,

(iv) She had raised a reasonable doubt as from the chemist report that there was no trace of morphine or heroin on the accused's nail clippings and the plastic bag was not dusted for fingerprints.

[2] As such the accused was not guilty of the offence as charged and acquitted and discharged.

[Appeal dismissed - no written judgment by the Federal Court.]

Case referred to:
Saad Ibrahim v. PP [1968] 1 MLJ 158

Legislation referred to:
Dangerous Drugs Act 1952, ss. 39B(1)(a), (2)

Criminal Trial No. 9/80:
For the accused - Karpal Singh; M/s. Karpal Singh & Co., Tan Seng Jin; M/s. Lim Huck Aik & Co.
For the prosecution - Abdul Hamid bin Embong, DPP

Criminal Appeal No. 1 of 1982:
For the appellant - Shaik Daud bin Hj. Md. Ismail, DPP
For the respondent - Karpal Singh; M/s. Karpal Singh & Co.

JUDGMENT

Gunn Chit Tuan J:

The charge against the accused was as follow:

> That you on 24 August 1980 at about 8.15 p.m. at Butterworth Bus Station, in the District of Butterworth, in the State of Penang did on your own behalf traffik in dangerous drugs, to wit, 793.8 grammes of heroin, and you have thereby committed an offence under s. 39B(1)(a) of the Dangerous Drugs Act 1952 (Revised - 1980) and punishable under s. 39B(2) of the same Act.

A.S.P. Ramalingam (PW3) on receiving certain information on 24 August 1980, proceeded to the Butterworth Bus Station together with Det. Sergeant Lim Tiong Guan (PW4) and DPC Amiz (PW5). At about 7.30 p.m. PW3 saw the accused walking towards a staircase leading to the first floor of the said Bus Station. The accused was alone and she was carrying a plastic bag (P2). PW3 went up to her, identified himself and asked the accused what was in the bag but she remained silent. The bag was then opened by PW3 in front of the accused and in it were two men's shirts (Exhibit P7A and B) on top and beneath them were 5 Packages (P3AE) and some Chinese newspapers (P4). According to PW3, he first saw the accused about 40 feet away and recognised her from the description given to him when she was about 20 to 30 feet away. He observed that the accused had walked a few steps, stopped, looked around and then proceeded onwards. After arrest the accused was brought to the Butterworth Police Station where she was handed over to ASP Balbir Singh, the investigating officer (PW1). She was also searched and on her were found cash RM441 (P10), a D & C Bank cheque for RM800 (P11), a Sim Lim Finance book (P12), a driving licence (P13), two pawn tickets (P14A & B), an international passport (P15) and some business cards (P16).

At the close of the case for the prosecution, Mr. Karpal Singh very correctly conceded that the prosecution had made out a *prima facie* case against the accused and therefore did not make any submission of no case to answer. The accused was therefore called to enter upon her defence and after the three alternatives had been explained to her, she elected to give evidence on oath. She told the Court that she intended to come to Penang Island for shopping on 24 August 1980 when she was arrested at the Butterworth Bus Station that day. She intended to take a bus from Alor Star to Butterworth but had to wait for another bus as the first one was packed and there were no seats available. She waited for some time and a male Chinese passenger who was also unable to get a seat in the first bus suggested to her that they could take a taxi instead as it would be faster. She knew that person by sight but did not know his name. She and that male Chinese then walked to the taxi stand which is about 5 minutes' walk from the bus station. They waited there for sometime and when a male Malay came, the male Chinese offered to pay for the extra seat in a taxi so that they could get to Penang earlier. On reaching Butterworth the male Chinese asked her to hold a plastic bag for him whilst he went to buy some cigarettes. She was waiting for that male Chinese to come back and walked a few steps but did not look all round as described by PW3. The mouth of the bag was tied and she did not open it. She did not answer

PW3. because she did not know what was in the bag. She was not frightened but was surprised. She saw PW3 open the bag and found two shirts in it together with some packets. Later she was taken to the Police Station where ASP Tan (DW2) took her cautioned statement (D17).

Under cross-examination the accused said that as she had conversed with the male Chinese she did him a small favour by holding the bag (P2) for him. She went towards the staircase leading to the ferry because she thought that by going upstairs she would meet that male Chinese on his way back after buying cigarettes. She also said that she did not protest when she was arrested because she was surprised and could not speak the language of the people who had arrested her. She admitted however that she was cautioned in Hokkien by the Sergent (PW4) and understood him. But she added that as the Sergent (PW4) was the only Chinese, there was no point in protesting. She thought that she could explain better in the Police Station. She also admitted that she understood simple Malay but said that she did not protest to ASP Balbir Singh (PW1), the investigating officer, because she was frightened when she got to the Police Station. I found the accused, as also pointed out by the learned deputy in his submission to be a smart and alert witness who answered questions intelligently and was not discredited under cross-examination but I had some doubts whether she was a witness of truth because of some inconsistencies between her evidence in Court and her cautioned statement (D17) which was recorded by ASP Tan Ghee Leong (DW2).

However, it was the submission of Mr.Karpal Singh that the accused had given evidence on oath and had shown on the balance of probabilities that she had no knowledge of the contents of the bag (P2). He then referred to the accused's evidence as well the evidence of ASP Ramalingam (PW3) who had admitted under cross-examination that he only saw the accused coming from the direction of the taxi stand which is at the far end of the bus station but did not see her alighting from a taxi. Counsel also stated that the accused's evidence in Court was consistent with what she had said in her cautioned statement and argued that by remaining silent when she was arrested did not mean that she was guilty. He also argued that there was language difficulty and that the caution administered to her allowed her to remain silent. Counsel also referred to the evidence of ASP Balbir Singh (PW1) who had admitted under cross-examination that after he was given the recorded statement of the accused, he read it and had investigated on it. Counsel also pointed out that two men's shirt were found in the bag (P2) and that in the chemist report (P5) the chemist had stated that he did not find any morphine or heroin on the accused's nail clippings. Counsel then complained that the five packages (P3AE) were not dusted for fingerprints to show whether they had been handled by the accused or by someone else. After referring to the case of *Saad Ibrahim v. PP* [1968] 1 MLJ 158, Counsel submitted that accused in this case had given an explanation which was consistent with her innocence and even if the Court did not believe that explanation, it should consider whether it might have reasonably been true although not convinced of its truth.

The learned deputy in reply stated that the question in this case was whether the defence had created reasonable doubts in the prosecution's case. He too pointed out to the fact that the accused did not protest when she was arrested and submitted that it was improbable that a man would leave a big bundle in the custody of a stranger. After referring to inconsistencies in the accused's evidence he argued that the accused had made up a story which was not corroborated.

I considered that the accused had raised some reasonable doubts in the prosecution's case because she told the Court on oath that she came to Butterworth in a taxi together with a male Chinese who had asked her to hold a plastic bag for him whilst he went to buy cigarettes. She had also told the recording officer (DW2) at 10.50 p.m. on the day of her arrest that when she

arrived at the Butterworth taxi stand near the ferry terminal a male Chinese passenger handed over to her a plastic packet to hold whilst he went to buy cigarettes. PW3 had confirmed under cross-examination that the taxi stand was at the far end of the bus station and that the accused had come from the direction of the taxi stand but he did not see her alighting from a taxi. That prosecution witness (PW3) had also said in examination-in-chief that he only first saw the accused in the said bus station itself when she was about 40 feet away from him. When the accused made her cautioned statement (D17) to ASP Tan (DW2) at about 10.00 p.m. on 24 August 1980 she could not possibly have know that the police party did not observe her alighting from a taxi. She had, therefore, raised a reasonable doubt that there was a male Chinese who had come from Alor Star to Butterworth with her in a taxi and had given her the bag to hold before she was arrested by the police.

Counsel for the defence also pointed out and I agreed with him that there was yet another doubt in the prosecution's case. Mr Karpal Singh argued that the cautioned statement (D17) which the accused had made to ASP Tan (DW2) on the night of her arrest on 24 August 1980 was somewhat like a notice in writing to be given by an accused person of a defence of alibi and on which the police could have investigated before prosecution and trial of the accused. The investigating officer, ASP Balbir Singh (PW1) had in fact admitted under cross-examination that he was given the accused's recorded statement on the very night of her arrest. He also admitted under cross-examination that he had read it and had investigate on it. Unfortunately the learned deputy did not re-examine him on this point and there was, therefore a reasonable doubt raised as to whether the Court should draw the inference that the police did conduct investigations regarding the contents of the accused's recorded statement and had found that there was no truth in what she had told ASP Tan (DW2) on 24 August 1980 or whether an inference should be drawn that the police after investigations on that recorded statement found that what she had told the recording officer was the truth. There would have been no difficulty for the police to have made some enquiries to find out whether the accused did in fact leave Alor Star at about 6.30 p.m. on that day in a taxi driven by a male Malay in which there were a male Chinese passenger and a Malay passenger. The Court of course had to draw the inference which was favourable to the accused and give her the benefit of the doubt.

Finally, I considered that there was another reasonable doubt as to whether the two men's shirts (P7A & 7B) belonged to the accused's husband from whom ASP Balbir Singh, the investigating officer, had also recorded a statement or whether they belonged to someone else such as another male person who, as the accused claimed, had handed her the bag. The doubts in the prosecution's case were increased when one considered the fact that according to the chemist report (P5) there was no trace of morphine or heroin on the accused's nail clippings and, as also pointed out by the learned defence Counsel, the five packages (P3A to E) found in the plastic bag (P2) were not dusted for fingerprints to find out whether they had been handled by the accused or by someone else who could have handed them to her. I therefore found that the defence had, on the balance of probabilities, raised some reasonable doubts on the truth of the prosecution's case. In any case, even if accused was not a witness of truth, I considered that her defence might reasonably be true and was consistent with innocence. In all the circumstances of this case. I therefore found the accused no guilty of the offence as charged and acquitted and discharged her.

Also found at [1989] 2 CLJ 1090